

# **Maryland Learning Collaborative to Support Opioid Use Disorder Examination and Treatment Act and Medications for Addiction Treatment (MAT) Implementation for Justice-Involved Populations**

The Current Legal Landscape for MAT in Jails: What do jail, and county leaders need to know to manage risk?

Part 2

May 31, 2023



# MAT COACHING TEAM: HEALTH MANAGEMENT ASSOCIATES (HMA)



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**Additional  
Faculty:  
Clinical  
Advisors and  
Subject Matter  
Experts**

# CONTINUING EDUCATION CREDITS

- Health Management Associates (HMA), #1780, is approved to offer social work continuing education by the Association of Social Work Boards (ASWB) Approved Continuing Education (ACE) program. Organizations, not individual courses, are approved as ACE providers. State and provincial regulatory boards have the final authority to determine whether an individual course may be accepted for continuing education credit. HMA maintains responsibility for this course. ACE provider approval period: 09/22/2022–09/22/2025. Social workers completing this course receive 1.0 continuing education credits.
- To earn CE credit, social workers must log in at the scheduled time, attend the entire course and complete an online course evaluation. To verify your attendance, please be sure to log in from an individual account and link your participant ID to your audio.
- The American Academy of Family Physicians (AAFP) has reviewed Maryland Learning Collaborative to Support Act and MAT Implementation for Jurisdictions Learning Series and deemed it acceptable for AAFP credit. Term of approval is from 04/19/2023 to 04/18/2024. Physicians should claim only the credit commensurate with the extent of their participation in the activity. This session is approved for 1.0 Online Only, Live AAFP Prescribed credits.
- **If you would like to receive CE/CME credit, the online evaluation will need to be completed.**  
You will receive a link to the evaluation shortly after this webinar.
- Certificates of completion will be emailed within 10–12 business days of course completion.

# PRESENTERS



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<b>Company</b>	No financial disclosures	No financial disclosures	No financial disclosures	No financial disclosures
<b>Nature of relationship</b>	N/A	N/A	N/A	N/A

HMA discloses all relevant financial relationships with companies whose primary business is producing, marketing, selling, re-selling, or distributing health care products used by or on patients.

# WEEKLY VIRTUAL SESSIONS

## Special Guests:

- Dr. Eric Weintraub U of Maryland 6/7

- Telehealth and MAT
- Withdrawal Management (“detox”)- new BJA guidelines
- MAT Case Scenarios

Funding for the program is provided by the Governor's Office for Crime Prevention, Youth, and Victim Services (GOCPYVS). Technical assistance is provided by HealthCare Access Maryland (HCAM) and Health Management Associates (HMA).



# WEEKLY VIRTUAL SESSIONS

Reminder: Participating jails and jurisdictions are eligible to receive up to a \$25k stipend for:

1. Joining Wednesday learning sessions
  2. Engaging in 1:1 coaching with HMA team, including site visit(s)
  3. Attending June 13<sup>th</sup> in person learning collaborative (register [here](#))
1. **REGISTRATION IS OPEN!**

Funding for the program is provided by the Governor's Office for Crime Prevention, Youth, and Victim Services (GOCPYVS). Technical assistance is provided by HealthCare Access Maryland (HCAM) and Health Management Associates (HMA).





# GETTING TO KNOW EACH OTHER

Who is with us today?

- Please introduce yourself
- Your name, jurisdiction/location and role/position



Image Source: <https://www.daterichmenclub.com/wp-content/uploads/2018/02/Getting-to-Know-Each-Other-1.jpg>

# COACHING COMPONENTS: Addressing Act Requirements

Medications for  
Addiction  
Treatment (MAT)

Behavioral Health  
Interventions

Screening and  
Assessment

Peer Services

Medicaid screening  
and enrollment  
processes

Diversion/  
Medication  
Administration  
Integrity

5/16/2023



# LEARNING FROM LIABILITY:

WHAT LOSS TEACHES ABOUT HOW TO SAVE LIVES—AND MONEY

# LEARNING OBJECTIVES

Describe the impact of legal requirements related to MOUD on clinical care for incarcerated people with SUD.

Identify individual legal responsibility in assuring the standard of care is met.

Compare the costs of liability with funding the mandate.

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# PRIMARY CONSTITUTIONAL LAWS OF ACCESS TO MAT IN CARCERAL SETTINGS: PERSONS CONVICTED OF A CRIME

- The Eighth Amendment of the U.S. Constitution prohibits cruel and unusual punishment for those convicted of a crime.
- Basic 8A Analysis in *Estelle v. Gamble*, 429 U.S. 97 (1976)
  - Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.
- **Takeaways**
  - **The jail/prison medical team may not ignore the needs of incarcerated persons.**
  - **Jail/prison staff may not intentionally deny or delay access to medical care or intentionally interfere with the treatment once prescribed.**

5/16/2023

# PRIMARY CONSTITUTIONAL LAWS OF ACCESS TO MAT IN CARCERAL SETTINGS: PERSONS DETAINED BEFORE TRIAL

- The Fourteenth Amendment of the U.S. Constitution requires due process, which means the government cannot punish someone for a crime unless and until the person is convicted.
- Basic 14A Analysis in *Cudnik v. Kreiger*, 392 F.Supp. 305 (N.D. Ohio 1974)
  - Pretrial detention is not punishment, but rather a means for ensuring that a person will show up for trial and a means for ensuring jail security, including against diversion.
- **Takeaway**
  - **Pretrial detainees cannot be denied the standard of care for their medical conditions.**

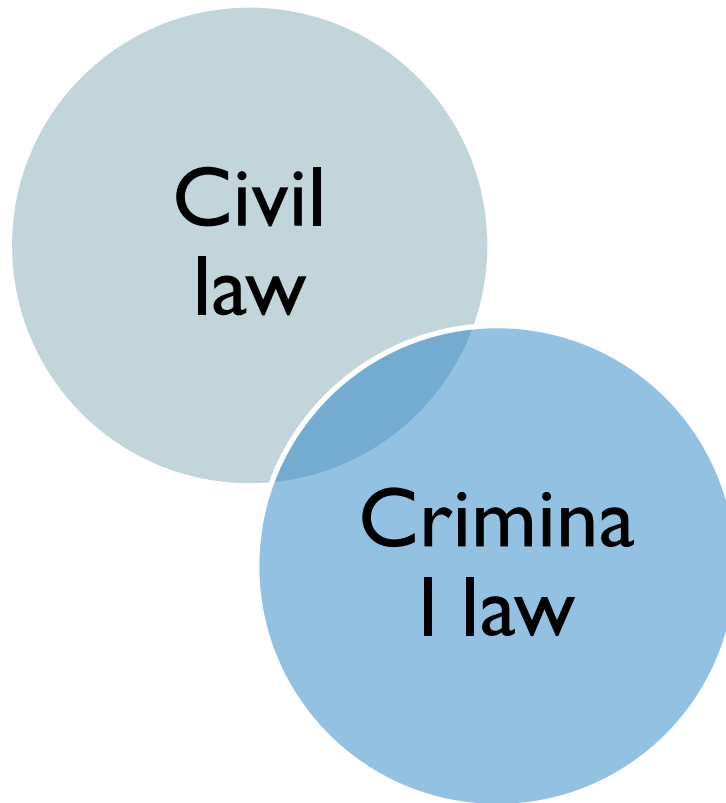
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# PRIMARY CONSTITUTIONAL LAWS OF ACCESS TO MAT IN CARCERAL SETTINGS: PERSONS WITH LIMITATIONS RELATED TO SUBSTANCE USE

- Several laws prohibit discrimination on the basis of disability, including Americans with Disability Act Title II (ADA), Rehabilitation Act §504, and Patient Protection and Affordable Care Act §1557.
- Basic Disability Discrimination Analysis in *Pesce v. Coppinger*, 355 F. Supp. 3d 35, 45 (D. Mass. 2018)
  - People with substance use disorder (SUD) are considered to have a disability if the SUD substantially limits one or more of their major life activities. (Hint: This is likely everyone with SUD.)
    - Exception: Persons who are currently using unlawful drugs (but note that prescribed MOUD is not unlawful)
      - However, an individual cannot be denied health services, or services provided in connection with drug rehabilitation, on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.
- **Takeaway**
  - **People with disabilities cannot be denied the standard of care, (or in the case of §1557, Essential Health Benefits), which is available to everyone else.**

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# STATE LAWS OF ACCESS TO MAT IN CARCERAL SETTINGS



- Civil lawsuits are generally filed against
  - the locality or state
  - the sheriff
  - department personnel
  - internal care teams
  - contracting healthcare entity
- Criminal charges are generally filed against department personnel.

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## STUDY: TREATING SUD MITIGATES OTHER COSTLY HEALTH ISSUES

CATEGORY OF DEATH	TOTAL NUMBER OF CASES	EVIDENCE OF SUBSTANCE USE ISSUES	EVIDENCE OF WITHDRAWAL
Withdrawal	69	58*	67*
Officer Use of Force	42	13	8
Overdose	17	17	1
Physical Illness	144	17	15
Suicide	157	31	32
Force by Another Incarcerated Person	14	0	0

\*The study's authors determined evidence based on facts plead in the complaint that a person was observably in withdrawal before they died. In the "missing" cases, there were no facts in the complaint about substance use or withdrawal, though the cause of death was available.

5/16/2023

Source: O'Neill Institute, Dying Inside: To End Deaths of Despair, Address the Crisis in Local Jails (Dec. 2022).

## STUDY: FAMILIES OF THE DECEASED ARE COMPENSATED

- A survey of civil litigation from 2015 to 2020 involving all causes of deaths in jail custody showed over **\$292,000,000 in awards** across 359 cases.
  - And that number underrepresents the costs of liability because only 76% of the 477 cases studied had financial outcome data.
    - Payors: state and local governments, correctional officers, and healthcare providers (via liability insurance and/or taxpayer dollars)

### Settlements

Range: \$4,000 - \$12,850,000  
Median: \$575,000  
Mean: \$1,376,816

### Jury Verdicts

Range: \$119,000-\$11,857,344  
Median: \$1,600,000  
Mean: \$3,397,908

5/16/2023

Source: O'Neill Institute, Dying Inside: To End Deaths of Despair, Address the Crisis in Local Jails (Dec. 2022).

## STUDY: COMMON FACT PATTERNS (PART I)

### Lessons from common fact patterns leading to liability for deaths in jails & prisons

Screen individuals at intake for mental health conditions, suicide risk, substance use disorders, and physical illnesses.

Develop and follow protocol (for example, require correctional staff to inform a qualified health care professional when alerted about a medical need).

Address requests for care/presence of distress by the incarcerated individual, other incarcerated persons witnessing medical distress, and/or jail personnel.

Do not delay necessary healthcare.

5/16/2023

Source: O'Neill Institute, Dying Inside: To End Deaths of Despair, Address the Crisis in Local Jails (Dec. 2022).

## STUDY: COMMON FACT PATTERNS (PART 2)

### Lessons from common fact patterns leading to liability for deaths in jails & prisons

Evaluate individual need for therapy, counseling, psychiatric care, or other medical care when explicitly requested by the incarcerated individuals.

Provide evidence-based medication to incarcerated people with opioid use disorder—specifically, methadone and buprenorphine.

Do not use restrictive housing to address suicide risk because research shows that it increases the risk of suicide.

Seek to provide adequate mental health and medical staffing to address needs.

Properly train correctional officers.

5/16/2023

Source: O'Neill Institute, Dying Inside: To End Deaths of Despair, Address the Crisis in Local Jails (Dec. 2022).

County Jail's policy is for a medical technician to conduct a medical examination upon intake. If the detained person informs the tech of a methadone prescription, the med tech will fill out a methadone referral card and refer the person to a clinician. The clinician will then complete a clinical assessment. Once the pharmacy department receives the methadone referral card, the pharmacist is to call the outpatient methadone clinic to verify the detained person's participation in a methadone program. After confirming participation in a methadone program, the pharmacy department, which is staffed seven days per week, must then call the security desk at the jail so that a security officer can bring the detained person to the pharmacy for dispensation of medication. The pharmacy does not maintain records to ensure that a detained person is brought to the pharmacy department by the security office, and the jail does not have a practice of reporting officers who fail to bring a person for methadone.

On Friday, James reported to County Jail ("County") to serve a ten-day sentence for a traffic violation. He received the customary intake medical screening, reporting that he was receiving methadone as part of his treatment for substance use disorder. The tech filled out a methadone referral card but did not refer James to a clinician. On Monday, the pharmacist verified James' participation in a methadone program. Later that day, the pharmacist contacted the security officer, who did not get James. On Tuesday inmate workers reported to an officer that James was "dope sick" and in need of medical attention. A social worker visited with him, telling him that it usually takes County three days to verify a methadone prescription, and provided a work excuse. On Wednesday, James complained to a lieutenant that he had not received any methadone, and he was started on comfort meds. Later that day, James suffered a seizure and cerebral aneurysm and died.

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## TAKEAWAYS

The legal landscape is an important lens for going upstream to improve health outcomes.



The downstream costs of liability are higher than the upstream costs of medications for substance use disorder.



Avoiding liability for denying medications for substance use disorder is additionally associated with reductions in need for other costly health issues.



## QUESTIONS AND DISCUSSION

# QUICK EVALUATION POLL

Overall, today's training session was:

- Very useful
- Somewhat useful
- Not very useful
- Not useful at all

The material presented today was:

- At the right level
- Too basic
- Too detailed

5/16/2023

# NEXT STEPS

Register for 1:1 virtual and in person individualized coaching & support for your jurisdiction - [link here](#).

Engage in Wednesday virtual sessions through June

**Participatory stipends  
available to offset  
costs - up to \$25k**

Join the statewide in-person conference

- Tuesday, June 13, 8:30am-4pm
- Location: BWI Airport Marriott (1743 West Nursery Road Linthicum Heights, MD 21090)
- **Register** for the conference [here](#)

5/16/2023



COVERAGE. CARE. CONNECTIONS.



# EVALUATION

## CONTACT US

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**FOR ANY QUESTIONS OR COMMENT**

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